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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: Angela Hui et al.

Serial No.: 10/032,757

Filed: December 27, 2001

Art Unit: 2814

Examiner: Marcos D. Pizarro Crespo

For:

METHOD AND SYSTEM FOR FORMING DUAL GATE STRUCTURES  
IN A NONVOLATILE MEMORY USING A PROTECTIVE LAYER

**RESPONSE TO RESTRICTION REQUIREMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action having a mailing date of December 17, 2002 (Paper No. 4), with a one-month shortened statutory period for response set to expire on January 17, 2003, the Applicants hereby respond as follows:

The Examiner has a required restriction to one of the following inventions:

- I. Claims 1-6, drawn to a semiconductor device, classified in class 257, subclass 288;
- and
- II. Claims 7-15, drawn to a method of making a semiconductor device, classified in class 438, subclass 197.

**CERTIFICATION UNDER 37 C.F.R. § 1.8**

I hereby certify that this correspondence (along with any item referred to as being enclosed herewith) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on January 17, 2003.

Signature

Serena Beller

(Printed name of person certifying)

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The Applicants provisionally elect Group I with traverse. The Restriction Requirement is submitted to be improper for the reasons set forth below.

The Examiner states that "in the instant case unpatentability of the group I invention would not necessarily imply unpatentability of the group II invention, since the device of the group I invention **could be made by processes materially different** than those of the group II invention, for example, instead of providing a plurality of sources residing between portions of gate stacks, as it is recited in claim 7, a plurality of sources in claim 1 may be provided before the plurality of gate stacks, and in a subsequent step the gate stacks may be provided so as to reside between portions of the plurality of sources." Paper No. 4, Pages 2-3. Applicants respectfully traverse the assertion that the patentability of either Group is relevant to the determination of whether or not the Groups are separate inventions. Further, as understood by the Applicants, the Examiner determines that the device of the Group I invention may be made by a materially different process because you may interchange the order of the steps in method claim 7 to produce the same product. Applicants respectfully assert that a materially different process is not shown by simply changing the order of the steps in method claim 7. A method claim with the elements A, B and C is the same invention as a method claim with elements A, C and B. They are not distinct processes. Further, the Examiner has not provided any rationale for asserting that by changing the order of the steps in method claim 7 a materially different process is shown. The Examiner has not cited to any passage in the specification that specifically indicates that the process of providing a semiconductor device is limited to the particular order of the steps recited in method claim 7. In order to find that the product as claimed may be made by another materially different process, the Examiner must find a materially different process that includes materially different steps not merely changing the order of the steps as claimed in method claim 7. Therefore, Applicants respectfully assert that the Restriction Requirement is unsupported by showing that the inventions in Groups I and II are distinct. *See* M.P.E.P. §806.05(e). Applicants respectfully request the Examiner to withdraw the Restriction Requirement upon reconsideration.

CONCLUSION

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicants

By. 

Robert A. Voigt, Jr.

Reg. No. 47,159

Kelly K. Kordzik

Reg. 36,571

5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270  
(512) 370-2832

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